

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA
as representative of : Title III
THE COMMONWEALTH OF PUERTO RICO, *et al.*, : Case No. 17-BK-3283 (LTS)
Debtors.¹ : (Jointly Administered)

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**STATEMENT OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS
IN RESPONSE TO LIMITED OBJECTION OF PBA FUNDS, DATED
FEBRUARY 20, 2018, TO MOTION TO EXTEND TIME TO ASSUME
OR REJECT UNEXPIRED LEASES, DATED FEBRUARY 13, 2018**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors of all title III Debtors (other than COFINA) (the “Committee”) hereby submits its statement (the “Statement”) (i) in response to the *Limited Objection of the PBA Funds to the Motion to Extend Time to Assume or Reject Unexpired Leases* [Docket No. 2557] (the “Objection”) and (ii) in support of the *Motion for Entry of Third Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property Under Which the Puerto Rico Public Building Authority is the Lessor Pursuant*

¹ The Debtors in these title III cases, along with each Debtor’s respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566(LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780) (Last Four Digits of Federal Tax ID: 3747).

to Bankruptcy Code Section 365(d)(4) [Docket No. 2494] (the “Motion”). In support of this Statement, the Committee respectfully states as follows:

STATEMENT

1. The PBA Funds² assert that any extension of the Debtors’ time for deciding whether to assume or reject unexpired leases should be subject to the Rent Motion, in which the PBA Funds assert that, under section 365(d)(3) of the Bankruptcy Code, the PBA is entitled to no less than \$289 million of “rent” payments under its purported leases (the “Purported Leases”) with the Debtors. As explained in the Committee’s Preliminary Objection³ to the Rent Motion, however, the Purported Leases are not enforceable under section 365(d)(3) of the Bankruptcy Code because they are in reality not “leases” at all but rather components of a thinly disguised financing transaction between the Commonwealth and the PBA.

2. Moreover, the PBA Funds have not shown that they (as opposed to the PBA itself) have standing to seek relief from the Debtors under section 365(d)(3) for a variety of reasons, including the reasons set forth in the Debtors’ objection to the Rent Motion⁴ and because, as explained in the Preliminary Objection, the bonds held by the PBA Funds are potentially invalid as having been issued in violation of constitutional debt limits. As the PBA Funds acknowledge, sections 365(d)(3) and (d)(4) of the Bankruptcy Code “work in tandem to balance the rights of landlords and tenants.”⁵ Because the PBA Funds have no rights under section 365(d)(3), they have no right to demand relief under 365(d)(4), either.

3. For these reasons, the Objection should be overruled.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Objection.

³ The “Preliminary Objection” is the *Preliminary Objection of Official Committee of Unsecured Creditors to Motion of PBA Funds for Payment of Rent Dated February 13, 2018* [Docket No. 2586].

⁴ See *Objection of Financial Oversight and Management Board to Motion of PBA Funds for the Payment of Rent* [Docket No. 2587].

⁵ Objection ¶ 2.

WHEREFORE, the Committee respectfully requests that the court overrule the Objection and grant the Motion.

Dated: February 28, 2018
San Juan, Puerto Rico

/s/ Luc A. Despins

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– and –

/s/ Juan J. Casillas Ayala

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